

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARK A. SLAUGHTER,

Defendant-Appellee.

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UNPUBLISHED

October 9, 2014

No. 316497

Wayne Circuit Court

LC No. 13-001740-FH

Before: RIORDAN, P.J., and CAVANAGH and TALBOT, JJ.

PER CURIAM.

The prosecution appeals as of right an order dismissing all charges against defendant as a result of the trial court's order granting defendant's motion to suppress. We reverse and remand.

**I. FACTUAL BACKGROUND**

Defendant was charged with possession with intent to deliver less than 50 grams of heroin, MCL 333.7401(2)(a)(iv), manufacturing of 20 or more marijuana plants but less than 200, MCL 333.7401(2)(d)(ii), possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The charges resulted from a search warrant that was issued and executed on defendant's property. Detroit Police Officer Roy Harris requested the search warrant after conducting surveillance on defendant's property on September 18, 2012. In his affidavit in support of the warrant, Harris stated:

- 1.) The Affiant is a sworn member of the Detroit Police Department, currently assigned to the Narcotics Enforcement. Affiant has had numerous training in narcotics identification, manufacturing, sales, trafficking and undercover techniques by the (DPD) Detroit Police Department. Affiant also has experience and is familiar with narcotics in their various forms, packaging and distribution tactics and affiant is able to identify by sight.
- 2.) During the month of September 2012, affiant received information from an unregistered informant who stated that narcotics are being stored at and sold from 19308 Trinity. The informant stated that he/she go [sic] to this house on a regular basis and has seen narcotics at this location on numerous occasions. The

informant also stated that he/she purchased narcotics from this house on numerous occasions.

3.) On September 18, 2012, affiant conducted surveillance of 19308 Trinity and observed on 6- [sic] separate occasions within 30 minutes, suspected buyers go into this location, stay for a short period of time then leave. On two of the six occasions, affiant observed suspected buyers leave this house with black plastic bags of suspected narcotics in their hands as they entered into their vehicles. During this period of time, affiant also observed one of the buyers arrive at this location, exit a vehicle with money in his hand, run into the front doorway of this house at which time he handed the seller a sum of suspected money in exchange for a plastic bag of suspected narcotics.

Affiant participated in numerous raids in the overwhelming majority of theses [sic] raids, firearms and or weapons were found and used to protect illegal narcotics activity. Due to affiant's experience, training and knowledge, affiant has probable cause to believe that narcotics are stored at and sold from the above described location.

Based on the above facts, the magistrate issued a search warrant for the premises. When the search warrant was executed, the police discovered and seized: "a knotted sandwich bag containing 14 knotted wraps of marijuana, a knotted sandwich bag containing small chunks of heroin and a knotted sandwich bag containing a lotto foil of heroin," proof of residence, a loaded "nickel plated revolver," and 58 marijuana plants with "grow lights and fans" in the basement of the property.

Defendant filed a motion to suppress the evidence obtained in the search, arguing that the warrant lacked probable cause and particularity. After a hearing pursuant on defendant's motion to suppress, the trial court granted defendant's motion and dismissed the charges. The prosecution now appeals.

## II. SEARCH WARRANT

### A. STANDARD OF REVIEW

"We review for clear error findings of fact made by a trial court at a hearing on a motion to suppress evidence predicated on allegations that the police violated a defendant's constitutional rights." *People v Hill*, 299 Mich App 402, 405; 829 NW2d 908 (2013). "A finding of fact is clearly erroneous if, after a review of the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made." *People v Roberts*, 292 Mich App 492, 502; 808 NW2d 290 (2011) (quotation marks and citation omitted). Great deference is accorded to a trial court's probable cause determination. *People v Keller*, 479 Mich 467, 476-477; 739 NW2d 505 (2007). However, the trial court's ultimate ruling on the motion to suppress is reviewed *de novo*. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). Application of the exclusionary rule is a question of law that we also review *de novo*. *People v Stevens*, 460 Mich 626, 631; 597 NW2d 53 (1999).

### B. PROBABLE CAUSE & PARTICULARITY

The prosecution first argues that the trial court erred in finding that the search warrant lacked probable cause. We agree.

Both the Fourth Amendment of the United States Constitution and Const 1963, art 1, § 11 guarantee the right against unreasonable searches and seizures. *People v Bolduc*, 263 Mich App 430, 437; 688 NW2d 316 (2004). “The Fourth Amendment generally requires police to secure a warrant before conducting a search.” *People v Levine*, 461 Mich 172, 178; 600 NW2d 622 (1999) (quotation marks and citation omitted). A search warrant only may issue after a showing of probable cause. *People v Brown*, 297 Mich App 670, 675; 825 NW2d 91 (2012). Probable cause exists if there is a “substantial basis for inferring a fair probability that contraband or evidence of a crime exists in the location to be searched.” *People v Malone*, 287 Mich App 648, 663; 792 NW2d 7 (2010). “When probable cause is averred in an affidavit, the affidavit must contain facts within the knowledge of the affiant rather than mere conclusions or beliefs.” *People v Waclawski*, 286 Mich App 634, 698; 780 NW2d 321 (2009). “However, the affiant’s experience is relevant to the establishment of probable cause.” *Id.* The affiant may not draw his own inferences, but must state the matters that justify drawing them. *People v Martin*, 271 Mich App 280, 298; 721 NW2d 815, 831 (2006).

Also relevant is MCL 780.653, which provides:

The magistrate’s finding of reasonable or probable cause shall be based upon all the facts related within the affidavit made before him or her. The affidavit may be based upon information supplied to the complainant by a named or unnamed person if the affidavit contains 1 of the following:

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(b) If the person is unnamed, affirmative allegations from which the magistrate may conclude that the person spoke with personal knowledge of the information and either that the unnamed person is credible or that the information is reliable.

We examine the search warrant and underlying affidavit in a common-sense and realistic manner. *Malone*, 287 Mich App at 663. “Under the totality of the circumstances, this Court must then determine whether a reasonably cautious person could have concluded that there was a substantial basis for the magistrate’s finding of probable cause.” *Id.*

Here, the unnamed informant advised Harris that narcotics were being sold and stored at the premises, as the informant had purchased narcotics from the home. Harris then conducted an independent, personal investigation to corroborate this information. As we have previously held, “[a] warrant may issue on probable cause if the police have conducted an independent investigation to confirm the accuracy and reliability of the information regardless of the knowledge and reliability of the source.” *Waclawski*, 286 Mich App at 699 (quotation marks and citation omitted). Harris surveilled defendant’s property and observed six suspected drug buys, two of which involved the suspected purchasers leaving the property with visible “black plastic bags.” Harris personally observed several individuals engaging in suspicious activity—arriving at the property, leaving a short time later, some leaving with visible black bags, and suspected exchanges of money—that he reasonably determined were narcotic sales.

Moreover, we review Harris's observations in light of his experience and training. *Waclawski*, 286 Mich App at 698. Harris had over 23 years of service with the Detroit Police Department, and over 11 years with narcotics enforcement. He participated in numerous raids and based on his "experience, training and knowledge," he concluded that there was probable cause to believe that narcotics were being stored and sold at the house.

Based on Harris's experience as a police officer, the informant's information regarding narcotic sales that occurred at defendant's property, and Harris's personal observations that corroborated the informant's tip, a "reasonably cautious person" could determine that evidence of criminal conduct would be discovered at the premises. *Malone*, 287 Mich App at 663. Therefore, after a review of the totality of the circumstances, and applying a common-sense and realistic review, we conclude that the trial court erred in its probable cause analysis.

We further agree with the prosecution that the trial court erred in determining that the warrant lacked sufficient particularity.

"A search warrant must particularly describe the place to be searched and the persons or things to be seized." *People v Unger*, 278 Mich App 210, 245; 749 NW2d 272 (2008). "The amount of specificity required will vary with the circumstances and the types of items involved." *Id.* The purpose is to provide "reasonable guidance to the executing officers and to prevent their exercise of undirected discretion in determining what is subject to seizure." *Id.* (quotation marks and citations omitted).

The warrant described the property and items to be searched and seized as follows:

The entire premises and curtilage of 19308 Trinity. This location is described as a 1-story, single family, white vinyl siding dwelling with a gray roof, black grate and window shutters, a large picture window with bushes in the front. This house is the second house north of Cambridge located on the east side of the street between Cambridge and Vassar located in the City of Detroit, County of Wayne and the State of Michigan. Also to be searched is the [sic] or anyone else selling illegal drugs at this location. Also to seize, secure, tabulate, and make return according to law, the following property and things: and to seize, secure, tabulate, and make return according to law, the following property and things: All suspected controlled substances, all items in connection with the sales, manufacture, use, storage, distribution, transportation, delivery, or concealment of controlled substances. All books, records and tally sheets indicating the sales of controlled substances. All firearms and items establishing ownership, control, occupancy, or possession of the above described place.

This warrant had sufficient particularity to guide the police officers and to prevent their exercise of undirected discretion. *Unger*, 278 Mich App at 245. The warrant limited the search to "all suspected controlled substances," which is analogous to other cases where we have found sufficient particularity. See *People v Kaslowski*, 239 Mich App 320, 327 n 1; 608 NW2d 539 (2000) (upholding a warrant that allowed a search for "*all suspected controlled substances*, all monies, all records or other items indicating ownership or occupancy, and other items used to

facilitate narcotic trafficking” (emphasis added); see also *Unger*, 278 Mich App at 245 (holding that “any evidence of homicide” was of sufficient particularity).

Moreover, the inclusion of “all firearms” does not render the warrant overly broad. As we have previously held, “the description ‘All firearms’ [is] not overly broad since specific facts were alleged in the affidavit indicating that the house was the site for drug trafficking, and it was further alleged that firearms are often kept by persons involved in drug use for protection and potential use during drug transactions.” *People v Zuccarini*, 172 Mich App 11, 16; 431 NW2d 446 (1988). In Harris’s affidavit, he averred that he suspected firearms would be present at the premises based on his participation “in numerous raids” and the fact that during the “overwhelming majority” of such raids, “firearms and or weapons were found and used to protect illegal narcotics activity.”

Because the warrant limited the scope of the search to suspected controlled substances, paraphernalia, documentation of narcotic sales, and firearms, the warrant was sufficiently particular and not overly broad. The trial court erred in finding otherwise.

### C. GOOD FAITH EXCEPTION

The prosecution lastly argues that even if the warrant was facially invalid, the exclusionary rule should not apply because of the good-faith exception. We again agree.

The exclusionary rule “generally bars the introduction into evidence of materials seized and observations made during an unconstitutional search.” *People v Hawkins*, 468 Mich 488, 499; 668 NW2d 602 (2003). However, when the police, in good faith, obtain and execute a search warrant, the exclusionary rule does not apply when the warrant is later judged deficient. *People v Goldston*, 470 Mich 523, 526; 682 NW2d 479 (2004); *Hill*, 299 Mich App at 413. Because the purpose of the exclusionary rule is to deter police misconduct, when the police are relying in good faith on a search warrant, excluding the evidence does not further that purpose. *Id.* Generally “an officer cannot be expected to question the magistrate’s probable-cause determination[.]” *People v Hellstrom*, 264 Mich App 187, 195; 690 NW2d 293 (2004) (quotation marks and citation omitted).

However, the officer’s reliance on the magistrate’s probable-cause determination and on the technical sufficiency of the warrant must be objectively reasonable. *Id.* at 196-197. Thus, if the warrant is so lacking in indicia of probable cause, or so facially deficient such that it failed to particularize the place to be searched or items to be seized, the good faith exception would not apply. *Id.* at 197. Nor can the good faith exception apply when the magistrate was misled by the information in the affidavit—that the affiant knew was false or provided with a reckless disregard for the truth—or if the magistrate wholly abandoned his judicial role in issuing the warrant. *Id.*

Here, Harris and the other officers executed the warrant in good faith. There is no indication that the facts stated in the affidavit were false, or that the magistrate was misled in any way. *Hellstrom*, 264 Mich App at 199. Harris based his affidavit on his personal observations of suspected narcotic sales. He reasonably concluded that these were narcotic sales based on his extensive police experience in narcotics enforcement. Further, as the items to be seized were

stated with “sufficient particularity,” it was reasonable for the officers to presume “that the warrant was facially valid.” *Hellstrom*, 264 Mich App at 199.

Because the police officers executed the warrant in good faith, the trial court erred in applying the exclusionary rule.

### III. CONCLUSION

Because the warrant was valid and the officers acted in good faith when executing it, the trial court erred in suppressing the evidence and dismissing the case. We reverse and remand for the trial court to reinstate the charges against defendant. We do not retain jurisdiction.

/s/ Michael J. Riordan

/s/ Mark J. Cavanagh

/s/ Michael J. Talbot